

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORNELL MAINE HEAD,

Petitioner,

Case No. 2:21-CV-12056
Honorable George Caram Steeh

v.

BECKY CARL,

Respondent.

**OPINION AND ORDER DIRECTING THE CLERK OF THE COURT TO
TRANSFER THE MOTION FOR A CERTIFICATE OF APPEALABILITY
(ECF No. 18) AND THE APPLICATION TO PROCEED WITHOUT
PREPAYING FEES AND COSTS ON APPEAL (ECF No. 16) TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254, challenging his state court convictions. The Court denied the petition for a writ of habeas corpus with prejudice. The Court also denied petitioner a certificate of appealability and leave to appeal *in forma pauperis*. *Head v. Carl*, No. 2:21-CV-12056, 2022 WL 3448037 (E.D. Mich. Aug. 17, 2022).

Petitioner filed a Notice of Appeal. (ECF No. 15). Petitioner has also filed a motion for a certificate of appealability (ECF No. 18) and an application to proceed without prepaying fees and costs on appeal. (ECF No. 16).

The proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for a writ of habeas corpus or the motion to vacate sentence. See *Sims v. U.S.*, 244 F.3d 509 (6th Cir. 2001)(citing Fed. R. App. P. 22(b)(1)). Petitioner should direct his request for a certificate of appealability to the Sixth Circuit. The Court, in the interests of justice, will order that petitioner's motion for a certificate of appealability to be transferred to the United States Court of Appeals for the Sixth Circuit.

A notice of appeal generally "confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal." *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985)(citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)(per curiam)); See also *Workman v. Tate*, 958 F.2d 164, 167 (6th Cir. 1992). Petitioner's notice of appeal divests this Court of jurisdiction to consider his motion to proceed without prepaying fees and costs on appeal. Jurisdiction of this action was transferred from the district court to the Sixth Circuit Court of Appeals upon the filing of the notice of appeal, thus, petitioner's motion would be more appropriately addressed to the Sixth Circuit. See *Grizzell v. State of*

Tennessee, 601 F. Supp. 230, 232 (M.D. Tenn. 1984). The Court orders that the Clerk of the Court transfer petitioner's motion to proceed without prepaying fees and costs on appeal to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

IT IS HEREBY ORDERED that:

The Clerk of the Court transfer the "Motion for a Certificate of Appealability" (ECF No. 18) and the "Application to Proceed Without Prepaying Fees and Costs on Appeal" (ECF No. 16) to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

It is so ordered.

Dated: September 26, 2022

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on September 26, 2022, by electronic and/or ordinary mail and also on Cornell Maine Head #946800, St. Louis Correctional Facility, 8585 N. Croswell Road, St. Louis, MI 48880.

s/Brianna Sauve
Deputy Clerk